

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Civil Case No.:

DUNCAN ODELL,

Plaintiff,

-against-

COMPLAINT AND  
DEMAND FOR  
JURY TRIAL

UNITED STATES OF AMERICA and JOHN DOE (a fictitious  
name intended to represent the operator of USPS vehicle  
plate5500253),

Defendants.

Plaintiff DUNCAN ODELL, by his attorneys, SACCO & FILLAS, LLP, as and for his  
Complaint against the Defendant UNITED STATES OF AMERICA ("Defendant"), respectfully  
alleges, upon information and belief, as follows:

**NATURE OF ACTION**

1. This is an action for personal injuries sustained by the Plaintiff, DUNCAN ODELL, when he was lawfully operating a 2008 Subaru motor vehicle bearing State of Vermont license plate number GKX119, when it was negligently struck in the rear by a vehicle bearing license plate number 5500253, which was owned by the United States Postal Service and being operated by non-party Martha Thaxton, who gained access to the vehicle solely as a result of the negligence of Defendant JOHN DOE, an employee of the UNITED STATES OF AMERICA, who while acting with the permission of and under the authority of the Defendant UNITED STATES OF AMERICA, negligently left the vehicle unattended with keys in the ignition, allowing Martha Thaxton to gain access to the vehicle.

2. Consequently, the plaintiff DUNCAN ODELL was caused to suffer personal injuries which are believed to be permanent in nature and involve his head, neck, back and right shoulder.

### **THE PARTIES**

3. The plaintiff, DUNCAN ODELL, at all times herein mentioned was and still is a resident of the County of Kings and the State of New York.
4. Prior to the commencement of this action, a claim for damage in writing was served on behalf of DUNCAN ODELL, upon the UNITED STATES OF AMERICA.
5. Prior to the commencement of this action, notice of the intention of DUNCAN ODELL to commence an action, unless the claim presented was adjusted within the prescribed time as set forth by applicable law to adjust such claims, was served on behalf of DUNCAN ODELL upon the UNITED STATES OF AMERICA.
6. Since service of such claim for damages, the UNITED STATES OF AMERICA neglected and has refused to pay said claim or adjust same.
7. The United States Postal Service, at all times herein mentioned, was and still is an agency/instrumentality/department of the UNITED STATES OF AMERICA, and maintains offices within the County of Kings, State of New York.
8. Although more than 6 months have elapsed since service of such claim for damages, UNITED STATES OF AMERICA neglected and has refused to pay said claim or adjust same.

**JURISDICTION AND VENUE**

9. The parties are of diverse citizenship.
10. The amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interest and costs.
11. Jurisdiction exists pursuant to the Federal Tort Claims Act.
12. Venue is founded upon 28 U.S.C. §1391.
13. Defendant UNITED STATES OF AMERICA at all times herein mentioned owns the United States Postal Service as a federal agency and organized under the Constitution and laws of the UNITED STATES OF AMERICA pursuant to title 28 U.S.C.A. § 1346.
14. Defendant UNITED STATES OF AMERICA at all times herein mentioned operates the United States Postal Service as a federal agency and organized under the Constitution and laws of the UNITED STATES OF AMERICA pursuant to title 28 U.S.C.A. § 1346.
15. Defendant UNITED STATES OF AMERICA at all times herein mentioned maintains the United States Postal Service as a federal agency and organized under the Constitution and laws of the UNITED STATES OF AMERICA pursuant to title 28 U.S.C.A. § 1346.
16. Defendant UNITED STATES OF AMERICA at all times herein mentioned manages the United States Postal Service as a federal agency and organized under the Constitution and laws of the UNITED STATES OF AMERICA pursuant to title 28 U.S.C.A. § 1346.
17. Defendant UNITED STATES OF AMERICA at all times herein mentioned controls the United States Postal Service as a federal agency and organized under the Constitution and laws of the UNITED STATES OF AMERICA pursuant to title 28 U.S.C.A. § 1346.

18. This action arises under Title 28, United States Code, Section 2674 and 2679. This Court has jurisdiction pursuant to 39 U.S.C.A § 409.
19. Venue is proper in this Court because the underlying incident occurred within this district and the defendant is located in this district.
20. Plaintiff having subsequently served an appropriate tort claim form SF-95 upon Defendant UNITED STATES OF AMERICA and acknowledgment of receipt having been served on January 15, 2021, and this action having not been resolved at the present time, this Court now maintains jurisdiction of this action. A copy of the appropriate tort claim form SF-95 and said response is annexed as **Exhibit "A."**

#### **GENERAL ALLEGATIONS**

21. On or about January 15, 2021, plaintiff DUNCAN ODELL owned and operated a certain Subaru automobile bearing Vermont license plate number GKX119.
22. On or about January 15, 2021, a certain government vehicle, bearing license plate number "5500253," was registered to the United States Postal Service, with an address of 1915 Fulton Street, Brooklyn, NY.
23. On or about January 15, 2021, the United States Postal Service maintained a certain government vehicle, bearing license plate number "5500253" for use by their employees in the course of their employment.
24. On or about January 15, 2021, Defendant UNITED STATES OF AMERICA was the registered owner of a certain government vehicle, bearing license plate number "5500253."
25. On or about January 15, 2021, Defendant UNITED STATES OF AMERICA was the

titled owner of a certain government vehicle, bearing license plate number “5500253.”

26. On or about January 15, 2021, Defendant UNITED STATES OF AMERICA was the lessee of a certain government vehicle, bearing license plate number “5500253.”

27. On or about January 15, 2021, Defendant UNITED STATES OF AMERICA was the lessor of a certain government vehicle, bearing license plate number “5500253.”

28. On or about January 15, 2021, Defendant UNITED STATES OF AMERICA maintained a certain government vehicle, bearing license plate number “5500253.”

29. On or about January 15, 2021, Defendant UNITED STATES OF AMERICA controlled a certain government vehicle, bearing license plate number “5500253.”

30. On or about January 15, 2021, JOHN DOE was the operator of a certain government vehicle, bearing license plate number “5500253.”

31. On or about January 15, 2021, JOHN DOE operated a certain government vehicle, bearing license plate number “5500253” within the scope of his employment with the United States Postal Service.

32. On or about January 15, 2021, JOHN DOE was an employee/agent/associate/servant of the Defendant UNITED STATES OF AMERICA and was acting under the color of law and in the course of his duties as an employee/agent/associate/servant of the Defendant UNITED STATES OF AMERICA.

33. On or about, January 15, 2021, Defendant UNITED STATES OF AMERICA is vicariously liable for the conduct of JOHN DOE as he was acting in his capacity as an employee/agent/associate/servant of the Defendant UNITED STATES OF AMERICA and was acting under the color of law and in the course of his duties as an

employee/agent/associate/servant of the Defendant UNITED STATES OF AMERICA.

34. On or about January 15, 2021, the automobile bearing license plate number “5500253” was being operated by JOHN DOE with the express knowledge, consent and/or on the business of its owner, the UNITED STATES OF AMERICA.
35. On or about January 15, 2021, at approximately 6:07 p.m., while JOHN DOE was operating the government vehicle bearing license plate number “5500253,” within the course and scope of his employment, he negligently, carelessly and recklessly left the vehicle unattended with its key in the ignition.
36. Solely as a result of JOHN DOE’s conduct, non-party MARTHA THAXTON was allowed to operate the government vehicle bearing license plate number “5500253,” which came into in contact at or near Fulton Street and Troy Avenue, in the County of Kings, State of New York.
37. Solely as a result of the defendants' negligence, carelessness and recklessness, the plaintiff was caused to suffer severe and serious personal injuries to mind and body, and further, that the plaintiff was subjected to great physical pain and mental anguish.
38. That as a result of the aforesaid incident, plaintiff, DUNCAN ODELL sustained personal injuries to his person and body which, upon information and belief are permanent in nature including permanent pain, discomfort, disability and loss of body functions.
39. The aforesaid occurrence was caused by the negligence of the defendants, employees, agents, and/or servants, without any culpable conduct on the part of the plaintiff.
40. That as a result of the foregoing, the defendant, its employees, agents and/or servants violated Sections 1101, 1102, 1105, 1110, 1111, 1113, 1115, 1120, 1122, 1123, 1124,

1125, 1126, 1127, 1128, 1129, 1130, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1160, 1161, 1162, 1163, 1164, 1166, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1180, 1180-a, 1181, 1182, 1190, 1192, 1200, 1201, 1202, 1203, 1203-b, 1210, 1211, 1223, 1225, 1225-a, 1226, 1227, 1228, 1229-b, 1229-c, 1250, 1251, 1252, and 1253\_ of the Vehicle and Traffic Law of the State of New York.

41. As a result of the foregoing, the plaintiff sustained serious personal injuries as defined in Section 5102(d) of the Insurance Law of the State of New York, and/or economic loss greater than basic economic loss as defined in Section 5102(a) of the Insurance Law of the State of New York.


42. By reason of the foregoing, the defendants are liable to the plaintiff DUNCAN ODELL for the sum of TWO MILLION DOLLARS (\$2,000,000.00).

**JURY DEMAND**

The plaintiff seeks this matter to be tried before a jury.

**WHEREFORE**, plaintiff demands judgment against the defendant in the sum of TWO MILLION DOLLARS (\$2,000,000.00) to date and continuing, altogether with the costs and disbursements of this action, and with interest from the date of the accident.

Dated: Astoria, New York  
October 25, 2022

  
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By: Victor Bota (VB 4940)  
**SACCO & FILLAS, LLP**  
Attorneys for Plaintiff  
31-19 Newtown Avenue  
Seventh Floor  
Astoria, New York 11102  
(718) 746-3440  
Our File No.: 12817-14



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DUNCAN ODELL,

Plaintiff,

-against-

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**CIVIL COVER SHEET, SUMMONS,  
COMPLAINT AND DEMAND FOR A JURY TRIAL**

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Dated: October 25, 2022

Signature: \_\_\_\_\_

  
Victor Bota, Esq. (VB 4940)

**SACCO & FILLAS, LLP**  
Attorneys for the Plaintiff  
31-19 Newtown Avenue  
Seventh Floor  
Astoria, New York 11102  
(718) 746-3440